



IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Writ Petition No. 4679/99.

PETITIONER

: Smt. Ful Kunwar, Widow of
late Hiralal, aged about
36 years, R/o. Katkona
Colliery, Quarter No. 68,
PS- Patna Tehsil Baikunthpur,
District- Sarguja, (Now
Korea, MP).

-Versus-

RESPONDENTS.

1. Assistant Manager, Katkona
Colliery, South Eastern
Coal Fields Ltd. Katkona
Tehsil Baikunthpur Distt-
Sarguja (Now Korea,) MP.
2. Commissioner, for Work Man's
Compensation (Labour Court)
Ambikapur, District- Sarguja,.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION
OF INDIA.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	24-7-2006 Shri D.N. Prajapati, Advocate and Shri A.K. Prasad, counsel for the petitioner. Shri P.S. Koshy, counsel for respondent No.1. Heard. This petition is filed under Article 226/227 of the Constitution of India against the dismissal of claim. Perusal of the record shows that this claim is filed by the widow as the husband died during the course of employment. The case was fixed for hearing on 18-11-1998. On that date neither the petitioner nor her counsel was present. Accordingly the claim petition was dismissed in default. Thereafter, the petitioner filed an application under Order 9 Rule 9 of the Code of Civil Procedure for restoration of the case and the ground shows that the daily diary of the local counsel was lost and he could not remember the date of hearing and for this reason he could not make his appearance. The application filed by the petitioner for restoration of the case was opposed by respondent No.1. After hearing the parties, learned Commissioner dismissed the application of the petitioner vide order dated 14-5-1999 (Annexure-P/6) finding that no sufficient reason has been shown. Learned counsel appearing for the petitioner contended that the impugned order refusing to restore the case is illegal and contrary to law and not sustainable. He also submitted that petitioner had engaged the counsel to appear and the party should not suffer because of mistake or error of the counsel. It is contended that it is a claim where the husband died during employment and there is no allegation of mala fide.	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Whereas Shri Koshy, learned counsel appearing for respondent No.1, contended that the petitioner was gross negligent in looking after the case. He supported the impugned order. The provisions of Order 9 Rule 9 C.P.C. are not penal. The party had engaged counsel. No mala fide is alleged. In the case of Rafiq and another vs. Munshilal and another reported in AIR 1981 SC 1400, Hon'ble the Supreme Court has held that:- <i>".....under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the later appears in the matter when it is listed."</i> Hon'ble Supreme Court further held that :- <i>"The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative."</i> Hon'ble Supreme Court in the case of G.P. Shrivastava vs. R.K. Raizadza and others reported in (2000) 3 SCC 54, has held that :-	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक *WP 4679/99* सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Gowri/P	<i>"The Courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The sufficient cause for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time" and that "the words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party."</i> This Court has also dealt with the similar matter in the case of Saraswati Bai & others vs. Kantabai & others reported in 2002 (2) CGLJ 184. Having considered the facts and circumstances of the case, material on record and further that the petitioner is a widow and claim petition is on behalf of the widow as her husband died during employment and there is no allegation of mala fide and in view of the judgments of the Supreme Court in the cases of Rafiq and another (supra), G.P. Shrivastava (supra) and the decision of this Court in the case of Saraswati Bai & others (supra), in the ends of justice, the order dated 14-5-1999 (Annexure-P/6) passed by the learned Commissioner is set aside and the case is restored to its original number and the case of the petitioner be decided on its own merits in accordance with law as expeditiously as possible. Parties are entitled for certified copy of this order as per rules. Copy of this order be supplied to the Court below.	Sd/- Fakhruddin Judge

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14.06.06